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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT BYRON LEE,

9 Petitioner,

10 v.

11 MARGARET GILBERT,

12 Respondent.

CASE NO. C17-5002 BHS

ORDER ON REVIEW OF  
REFUSAL TO RECUSE

13 This matter comes before the Court on Petitioner's motion to recuse U.S. Magistrate Judge  
14 J. Richard Creatura. Dkt. #34. Upon review of the motion, Judge Creatura declined to recuse  
15 himself. Dkt. #39. In accordance with the Local Rules of this District, Petitioner's motion was  
16 referred to the Undersigned for a review of Judge Creatura's refusal to recuse. LCR 3(e).

17 Petitioner bases his motion to recuse on what he describes as Judge Creatura's "poor  
18 judgment when I was a theft victim by Document No. 20 being stolen in his order last." He also  
19 alludes to "staff misconduct by Document No. 31." Dkt. #34-1 at 2. The two docket numbers he  
20 refers to are notices from the Ninth Circuit Court of Appeals regarding an appeal he filed which  
21 was ultimately dismissed for lack of jurisdiction. Petitioner makes no allegations (and this Court  
22 is at a loss to understand) as to what Judge Creatura did in regards to either of those appellate court  
23 communications that somehow reflects his "poor judgment," or how that establishes evidence of  
24 impartiality or bias.

1 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any  
2 proceeding in which his impartiality “might reasonably be questioned.” Federal judges also shall  
3 disqualify themselves in circumstances where they have a personal bias or prejudice concerning a  
4 party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C.  
5 § 455(b)(1).

6 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate  
7 if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality  
8 might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th  
9 Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not  
10 whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United*  
11 *States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540  
12 (1994), the United States Supreme Court further explained the narrow basis for recusal:

13 [J]udicial rulings alone almost never constitute a valid basis for a bias or  
14 partiality motion. . . . [O]pinions formed by the judge on the basis of facts  
15 introduced or events occurring in the course of the current proceedings, or of  
16 prior proceedings, do not constitute a basis for a bias or partiality motion  
17 unless they display a deep seated favoritism or antagonism that would make  
18 fair judgment impossible. Thus, judicial remarks during the course of a trial  
19 that are critical or disapproving of, or even hostile to, counsel, the parties, or  
20 their cases, ordinarily do not support a bias or partiality challenge.

21 *Id.* at 555.

22 Petitioner cites no reasons or evidence in support of his allegation that Judge Creatura has  
23 exhibited “poor judgment,” nor how Judge Creatura’s conduct reflects in any way some sense of  
24 bias or prejudice as regards Petitioner. This is completely insufficient to form the basis of a valid  
request for recusal.

25 The Court finds no evidence upon which to reasonably question Judge Creatura’s  
impartiality and AFFIRMS his denial of Petitioner’s request that he recuse himself.

1 The Clerk SHALL provide copies of this order to Petitioner and to all counsel of record.

2 DATED this 29<sup>th</sup> day of June, 2017.

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5 RICARDO S. MARTINEZ  
6 CHIEF UNITED STATES DISTRICT JUDGE  
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